

REMARKS PREPARED FOR DELIVERY
DIPLOMATIC ASSURANCES AND RENDITION TO TORTURE:
THE PERSPECTIVE OF THE
STATE DEPARTMENT'S LEGAL ADVISER

**Hearing before the House Foreign Affairs Subcommittee on
International Organizations, Human Rights and Oversight**

June 10, 2008

OPENING STATEMENT OF CHAIRMAN BILL DELAHUNT

This hearing will come to order.

Today we continue our examination of the topic of diplomatic assurances. With the appearance of the State Department's Legal Adviser, John Bellinger, we will turn our attention to the question of how the Department interprets its obligations under the Convention against Torture and FARRA, which is the implementing legislation passed by Congress in the 1990s, and how diplomatic assurances are invoked in this context.

Diplomatic Assurances, for those who aren't familiar with the term, refers to the commitment another country makes not to torture a particular individual we want to send there under a variety of scenarios. Under the Convention against Torture and FARRA, we are obligated not to send someone to a country where they will be tortured. -- so we use these "diplomatic assurances" to hopefully constrain the actions of the country to which the individual is sent.

My concern with this practice of utilizing so-called "assurances arises out of my interest in the case of Maher Arar. Maher Arar was a Canadian citizen of Syrian origin who was detained while on a stopover at JFK Airport. All on the basis of reports -- now discredited reports -- that linked him to al-Qaeda. He was rendered to Syria and, according to an independent Canadian report, was tortured --tortured, despite our having received "assurances" that he would not be.

These same “assurances” were the subject of a newly released redacted report from the Department of Homeland Security’s Inspector General. Just last Thursday, Inspector Skinner made the report available to this Subcommittee and Judiciary’s Subcommittee on the Constitution. That report had some pretty disturbing comments to make about these assurances – that they were “ambiguous” as to the source and authority of the person within Syria providing them – and that it appeared that no one checked to determine the sufficiency of these assurances. So to sum it up– there was nothing “assuring” about those “assurances”. And yet, we sent Mr. Arar to Syria on the basis of these assurances.

We have agreed not to discuss any information or details of this case which is classified. Yet even on the basis of unclassified information, the Arar case demonstrates the dangerous practice of relying on these diplomatic assurances. And this isn’t just a concern in the rendition program. We use such assurances on a regular basis in extradition and removal cases – not to mention in transfers from Guantanamo.

It is our purpose today, to examine how the process works—how does the Bush Administration obtain these assurances before sending someone to a country with a poor human rights record? How do you assess their sufficiency? Who makes the call on whether or not they are accepted? Who exactly is the Administration willing to take assurances from? And what can the Administration do to ensure that the other side maintains its side of the bargain?

I turn now to my friend and colleague, Dana Rohrabacher, for any comments he might have.